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May 12, 2006

National Organic Standards Board
c/o Mr. Mark Bradley
Associate Deputy Administrator
USDA-AMS-TMP-NOP
Room 4008-South Building
1400 Independence Avenue, SW
Washington, DC 20250-0020

Re: Response to Docket TM-06-06-PR

Dear Mr. Bradley:

I am writing to thank the USDA for its work to clarify the National Organic Standards in the wake of the Harvey decision. I appreciate the NOSB's work to uphold organic standards and agree that the regulations must be clear and consistent.

Earthbound Farm is concerned, however, that portions of the proposed language to change the OFPA are not clear and could cause confusion in the implementation of the USDA standard for organic production. Following are our comments regarding sections 205.600(b) and 205.605.

Revision Needed for §205.600(b)

The Court ordered in the Harvey ruling that regulations establishing criteria for review synthetic substances found at §205.600(b) were contrary to the plain language of the OFPA. (396 F.3d at 40). The NOP states that in November 2005 Congress amended the OFPA by "permitting the addition of synthetic substances appearing on the National List for use in products labeled "organic." (71 Fed. Reg 24821). The USDA now states that this alters the need for the NOP to remove the regulations at §205.600(b). However, the current language inconsistently applies these criteria to synthetic "processing aids and adjuvants", substances not specifically referenced in the Nov. 2005 OFPA amendment. It is extremely important to retain the stringent review criteria for use during the evaluation of any synthetic substance proposed for inclusion on the National List. Therefore, please make a technical correction in §205.600(b) to be consistent with the agency's interpretation of the Congressional amendment. The regulation should be amended as follows:

§205.600 Evaluation criteria for allowed and prohibited substances, methods, and ingredients.

The following criteria will be utilized in the evaluation of substances or ingredients for the organic production and handling sections of the National List:

a) * * *

b) In addition to the criteria set forth in the Act, any synthetic substance used in handling ~~as a processing aid or adjuvant~~ will be evaluated against the following criteria:

1) * * *

This correction will be consistent with the current NOP policy for materials review, which applies these criteria to all synthetic substances petitioned for handling, and are referenced in checklist evaluations used by NOSB for that purpose.

Revision Needed for § 205.605, Synthetic substances

In order to be consistent with the USDA interpretation of the Congressional amendments, §205.605 should under go the following technical revision:

§205.605 Nonagricultural (nonorganic) substances allowed ~~as ingredients in or on processed products~~ labeled as “organic” or “made with organic (specified ingredients or food group(s)).”

The following nonagricultural substances may be used ~~as ingredients in or on~~ processed products labeled as “organic” or “made with organic (spccified ingredients or food group(s))” only in accordance with any restrictions specified in this section.

This change will clarify that all substances, which includes ingredients and the ingredients considered to be processing aids, must appear on the National List in order to be used in foods labeled “organic” or “made with organic” ingredients.

In order for the organic industry to grow and compete in the marketplace, we must adhere to the same federal food safety guidelines as other processors and want to ensure that the use of certain synthetic substances in our production process is allowed.

If you have any questions, or would like to discuss this matter further, please do not hesitate to contact me directly.

Sincerely,



Will Daniels
Director of Quality Assurance